
**BZA-1835 & 1836
BLACK SWAN ENTERPRISES, LLC
Special Exception and Variances**

**STAFF REPORT
September 22, 2011**

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REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, with consent of owner and represented by Joseph Bumbleburg, is requesting a special exception to permit peat mining (SIC 1499—mining of non-metallic minerals) in the A zone. Seasonal mining will occur 7 a.m. to 7 p.m. Monday through Saturday. Two variances for the proposed operation are also on this agenda (BZA-1836). The property is located where CR 50 W ends at CR 790 N (about ½ mile west of I-65), more commonly known as 7910 N CR 50 W in Tippecanoe 18 (NW) 24-4. (UZO 3-2)

AREA ZONING PATTERNS:

The subject property and all surrounding properties are zoned A, Agricultural.

AREA LAND USE PATTERNS:

The property is currently undeveloped, comprised mainly of scrub grass, reeds and ponds at the western property line and far northeastern corner; the latter is where petitioner has indicated mining activity.

In 1973, the Koehler Brothers were approved for a peat mining operation on this same site (BZA-183). At that time, the mining was focused on the western edge of the site; in petitioner's current proposal mining is located in the northeast corner of the property. A dragline was installed to remove material, excavated peat was dried on the hillside and then taken to the Koehler Bros. site on SR 26 and sold.

TRAFFIC AND TRANSPORTATION:

The subject property is located at the end of CR 50 W where CR 790 N tees to the east. A farm field gravel drive extends north from CR 50 W providing access. Commercial driveway improvements must be approved by the County Highway Department. Traffic on this stretch of CR 50 W is minimal; seven homes along 50 W and 790 N use this portion of 50 W as primary access.

Parking requirements for this use are one space per employee on the largest shift. Petitioner has not indicated how many employees will be on site, but there is ample room on this 50+ acres for the required parking which does not have to be paved.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

This property has an interesting history with the interstate, previous peat mining operation, wetlands and legal drains. This property is part of the National Wetlands Inventory (wetlands codes PEMC, PEMF, PUBFX and PFO/SS1C), rich in organic material suitable for peat mining—as evidenced by the previous operation at this site.

The Delphine-Anson legal drain, cut in-half by I-65 to the east, runs along the north edge of this property to CR 100 W. According to the County Surveyor, there is also a county tile that runs parallel with CR 50 W and continues through the wetland portion of this property. This tile has gone through cycles of use and disrepair through the years. Conversations with a representative from the Soil and Water Conservation District indicate that I-65 caused disruption to the Delphine-Anson legal drain, creating the original wetland area at this site; the peat mining operation in the 70s and the properly working tile dried out the wetlands. In the 1980s, the tile broke, recreating the wetlands. The property owners in the area at that time asked the County Surveyor's office to repair the tile, done in accordance with applicable requirements, which again drained the wetlands. However, in the meantime the US Fish and Wildlife Service designated this area as part of the national wetlands.¹

Three agencies have jurisdiction over wetlands: the USDA (Department of Agriculture), Army Corps of Engineers and IDEM (Indiana Department of Environmental Management). In this case, the USDA won't have any interest because there is not a crop production component on the property and the USACE will not have jurisdiction because there is no navigable body of water involved (though petitioner should obtain a letter of non-jurisdiction). IDEM, which has jurisdiction over wetlands under Section 401 of the Indiana Isolated Wetlands Law, may require a permit and wetland mitigation. Additionally, petitioner must get Drainage Board approval for disturbance of greater than an acre of ground and any issues involving the legal drain or county tile.

STAFF COMMENTS:

Per the UZO Section 4-11-4: The petitioner shall formulate a Reclamation Plan **as part of its submission** to the ABZA for grant of special exception. This plan shall be coordinated with and guided by the instructions of the Indiana Department of Environmental Management for compliance with 327 IAC 15-6, Rule 6 or its successor and through the County Drainage Board for compliance with 327 IAC 15-5 Rule 5 or its successor with regard to soil erosion and sediment control and also compliance with the County's Storm Water Ordinance.

Petitioner has submitted a reclamation plan that states "the reclamation plan shall be coordinated with any Indiana State Departments interested in forestry and conservation, the Soil and Conservation and the Tippecanoe County Surveyor and this project shall be guided by the instructions of said departments." Since grants of special exceptions are all site-plan specific, if a change was necessitated by coordination with any of these agencies, petitioner would then need to apply for another special exception.

Staff cannot recommend either BZA-1835 or BZA-1836 be heard because the reclamation plan does not meet ordinance requirements.

STAFF RECOMMENDATION:

Continuance

¹ By the County Surveyor's estimation nearly all of Tippecanoe County was a wetland, but with installation of drains and tiles, lands dried out and development was possible. It is understandable then, that when a tile breaks, wetlands reform. The US Fish and Wildlife Service estimates that from 1780-the mid1980s, 85% of the wetlands in the state of Indiana were drained.